

Minutes of the Board of Adjustment meeting held on Monday, June 9, 2008, at 5:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Rosi Haidenthaller, Chair
Wendell Coombs, Jr.
Connie Howard
Tim Tingey, Community Development Director
Ray Christensen, Senior Planner
G.L. Critchfield, Deputy City Attorney
Citizens

Excused: Joyce McStotts, Vice-Chair
Jonathan Russell

The Pre-Meeting the Board of Adjustment members briefly reviewed the applications. An audio recording of this is available at the Murray City Community & Economic Development office.

APPROVAL OF MINUTES

Rosi Haidenthaller asked for additions or corrections to the minutes of May 12, 2008. Mr. Coombs noted a correction on Case #1354, page 4, Ms. Howard voted Nay. The minutes were approved as corrected.

Voice vote was taken. Minutes approved 3-0.

Rosi Haidenthaller explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property and that financial issues are not considered a hardship.

CASE #1346 - GARY DANSIE - 618 East 4800 South

Gary Dansie was present to represent this request. Ray Christensen reviewed the location and request for a side yard setback variance on a corner lot. This item has been continued from a previous meeting held on December 10, 2007 pending a survey being conducted on the property and boundary lines. The property is zoned R-1-8 (residential single family). Section 17.100.080(C) of the zoning code states the following: "Side Yard - Corner Lot. A corner lot side yard which is contiguous to a public or private street shall have a minimum depth of 20 feet. The other side yard shall be at least eight feet in depth." At the December 10, 2007 meeting, a motion was made to continue this request pending the completion of a survey to define the property boundary lines. The survey has been completed and the lot size shown on the site plan is 8,885 sq.ft. Mr. Dansie shows on the new site plan a proposed entrance addition which will be located within 8 feet of the property line. This will require a 12 foot variance from the Board.

Gary Dansie, 5095 Chinook Circle, stated there has been much confusion regarding fence lines and property lines along 4800 South Street. He stated that basically all the property lines have shifted to where each person owns a piece of the next persons house or at least right up against the home. He stated when the survey was completed, the true legal line on the west boundary is right on the actual bricks of the home. The home was constructed in the 1950's. Mr. Dansie stated he is desirous to clean up the home and make it more accessible. He stated 4800 South is a red zone and parking is not allowed and having the home face onto 4800 South would not be an ideal situation. He stated that traditionally the home has been accessed from Lincoln Street, but the actual address of the home is off 4800 South. He stated that he is desirous to orient the home off Lincoln Street because the practical access is from the driveway off Lincoln Street. In order to make the access from Lincoln and have a functional front

entrance for the home, he is proposing an addition so as to create a front door entry with a living room. He stated the addition is 20' X 16'. The actual new addition would be through the driveway with a sidewalk into the new addition.

Connie Howard expressed concern with changing the orientation of the home, with the addition, onto Lincoln Street, would then make the front yard setback to be 8 feet. Without the addition, the front setback as the home currently exists would be 24 feet, and 25 feet is the minimum front yard setback per zoning code. Mr. Dansie stated this lot is only 54 feet wide and the existing home does not meet the setbacks and is actually sitting on the side yard property line. He stated that if the existing home were to be torn down, the lot would be impossible to build any home and meet the setbacks. Mr. Dansie stated the zoning ordinance indicates that an existing lot cannot be denied a building permit.

Mr. Christensen stated that an existing lot can be built on, but does not guarantee variances. Mr. Dansie stated that it is impossible to build a home on a lot that is only 54 feet wide because a home could only be 4 feet wide in order to meet the front and rear setbacks. Mr. Christensen responded that this lot is legal nonconforming to the width requirements, but the home was not built to the required setbacks from the property line as recently discovered.

Connie Howard clarified that the home is legal nonconforming to the setbacks and this request is for an 8 foot setback and corner lots should have a minimum of 20 feet side yard setback.

Mr. Coombs suggested keeping the front of the home facing 4800 South, moving the carport further to rear of the property (south) and have the addition on the back of the home where there is much room on the south of the property. Mr. Dansie responded this suggestion would involve much more demolition, remodeling and expense. Mr. Dansie stated that a building permit cannot be denied for a nonconforming lot, but it is impossible to build a structure on this lot without some type of variance(s).

Rosi Haidenthaller quoted Section 17.100.070: "Prior created lots.....Lots or parcels of land which legally existed or created by preliminary or final plat approval to the application of this zone shall not be denied a building permit solely for reason of nonconformance with the parcel requirements of this chapter." She stated because this lot was created prior to this zoning requirement, there should be some type of concession made. She stated there is already a concession existing because the home is built on the side (west) property line. She stated the Board must decide whether the variance of 12 feet setback is good sound judgement on the Board's behalf.

Connie Howard stated that request as shown on the site plan indicates if the front of the home is from Lincoln Street, the front setback would then be 8 feet where the front yard setback minimum is 25 feet, and in essence would be a 17 foot variance. Mr. Dansie responded that the existing front yard has a safety problem and the front yard cannot be on this corner of 4800 South Street and Lincoln Street because it is a very busy area and is a traffic safety issue.

Mrs. Howard commented that the home may still orient towards 4800 South, but the homeowners may actually access the home from Lincoln Street which is allowed for better convenience. Mr. Dansie stated given the current configuration of the home, the existing entrance from Lincoln Street is not practical and is more of a "back cellar entrance". He stated that because this is an odd shaped lot, a variance could be granted based on the nonconforming size or odd shaped lot and is currently a clumsy situation. He stated his proposal would make the home more serviceable and more practical and helps remedy the safety issues.

Mr. Dansie stated another alternative is to not do the addition and run the sidewalk all around the side of the home to the front of the home, but this would not be an ideal solution. Mr. Dansie stated the back door enters into a corner that enters directly into the kitchen and the steps have no porch.

Connie Howard asked the coverage percentage of the lot. Mr. Dansie stated he has not calculated the percentage, but the front property line also has an issue that it is not at the sidewalk. He stated the true property line is back in the middle of the grass and the front of the home is also nonconforming to the front setback and has a fairly large front yard.

Ms. Haidenthaller opened the meeting for public comment.

John Bear Fabella, 614 East 4800 South, stated he is the adjacent property owner to the west and has lived here for the past 40 years. Mr. Fabella stated that the access from Lincoln Street is wide enough to have a car. He stated the front door of the existing home has not been used for at least 10 years and it makes more practical sense to have the front door or an entrance from Lincoln Street. He stated that he also does not use his front door entrance off 4800 South and uses the side door entrance. He stated that 4800 South Street is a very busy street. He stated that the home has been an eye sore for many years and the previous owners were foreclosed on. Mr. Fabella said he was in favor of the variance requested and it will improve the property and he does not wish to end up with "rift raft" neighbors because Mr. Dansie cannot improve the home and then has to get rid of the home.

Mr. Dansie stated that the reason he is interested in this home is because he is building a new home on the lot adjacent to the south and the reason he has to purchase this property when it was foreclosed upon was to solve a lot of the property line issues. He stated that he is interested in improving this property and in reality he will probably lose money in the process of improving the home in today's market.

Connie Howard stated that visibility for corner lots has always been a consideration for the Board and with the 21 feet in front of the property line to the curb and gutter there is a huge corner and visibility would not be obstructed by the addition.

Ms. Haidenthaller stated this is a pre-existing nonconforming lot with a pre-existing nonconforming home and what Mr. Dansie does with the lot is his choice and the Board must decide on the request.

Mr. Coombs stated the issue with the property boundaries and the home was apparently built on the side (west) property line, making it nonconforming, and this is not a typical situation and does create a special circumstance.

Connie Howard expressed concern if the front of the home is changed to Lincoln Street it would result in an 8 foot front yard setback. Mr. Christensen commented that the front of the home could still be on 4800 South as it exists, but an additional entrance could be off Lincoln Street. He stated that the front of the home orients to 4800 South and the address isn't going to change.

Connie Howard stated there are other options available for the property such as having the carport to the south.

Mr. Coombs stated that it is the burden of the applicant to demonstrate a hardship for the variance and Mr. Dansie has demonstrated the hardships are the narrowness of the lot, the

position of the home was originally built on the side yard boundary, and is nonconforming. He questioned if the request would materially affect the zoning ordinance by granting the variance or is it contrary to public interest. He stated in some respects public interests would be better served by having the entrance to the home off Lincoln Street than 4800 South, which they are currently doing anyway. He stated the home may be more functional with the addition as proposed, or is this a self imposed condition. He stated the addition may be a self-imposed hardship, but the home itself is nonconforming and this is a difficult situation.

Connie Howard stated if this home were demolished, a new home would not be able to be constructed given the narrowness of the lot without some type of a variance. Mr. Dansie is desirous to have added square footage to be able to enjoy the home and have a reasonable and "user friendly" entrance into the home.

Connie Howard made a motion that the 12 foot variance be granted as requested based on the pre-existing structure and the legal nonconforming lot, and in order for Mr. Dansie to be able to enjoy the home as his neighbors are able to enjoy their homes, that there is a quite a hardship associated with the property. This variance would allow for an 8 foot side yard setback on the east boundary. Seconded by Wendell Coombs.

Call vote recorded by Ray Christensen.

<u>A</u>	Mr. Coombs
<u>A</u>	Ms. Haidenthaller
<u>A</u>	Ms. Howard

Motion passed 3-0.

CASE #1356 - MARK SNOW - 4910 South Naylor Lane

Mark Snow was present to represent this request. Ray Christensen reviewed the location and request for a 411 sq.ft. area variance for a flag lot. The front lot meets the minimum 8,000 sq.ft., but the zoning regulations require a minimum of 10,000 sq.ft. for the rear lot #2; whereas the applicant is proposing a 9,589 sq.ft. lot. The applicant is requesting the variance so the existing fence lines at the north side of the property will not need to be moved to the surveyed boundary lot lines. If the fence line is to be moved to the surveyed property lines, there would be impact to the adjacent property owners to the north and sheds and trees would need to be relocated or removed. The property meets the 10,000 sq.ft. area requirements if the fence lines are moved to the surveyed lot line and a variance would not be required. A variance was previously granted for the front lot width at the setback line a couple of months ago.

Mark Snow, 7390 South 700 East, commented that he thought this particular variance request had been resolved at the previous meeting wherein the variance for the lot width at the front setback had been granted. Mr. Snow stated that the existing fence line differs from the survey, which is standard in this area, and if he is required to move the fence a variance would not be needed. There are existing sheds and trees along the surveyed boundary line, and he is requesting to establish the new property line to coincide with the fence line in an attempt to keep him and his neighbors happy. Mr. Snow stated that the new home will face the east similar to the other homes along Naylor Lane, which would create a larger setback for the homes to the west which was a concern at the previous Board of Adjustment meeting.

No comments were made by the public.

Wendell Coombs commented that there are discrepancies regarding fence lines and property lines along the 4800 South area and this is another one of those situations. He stated that at the previous meeting it was indicated by the adjacent neighbors to the north that they favored establishing the fence line to be the actual boundary line and that some of the neighbors had thought for many years that the fence was the property line and built sheds on the property that were not technically on their property. This variance request would help with that situation by establishing the fence line to be the new property line. The hardship is that with the literal enforcement of the zoning ordinance for the area of the flag lot would create a substantial hardship to the adjacent neighbors.

Wendell Coombs made a motion to grant the variance as requested for a 411 sq.ft. area variance and the literal enforcement of the zoning ordinance would cause an unreasonable hardship to the properties involved and there are special circumstances in that area attached to this property and the Board has seen in some of the properties along 4800 South that the boundary lines are somewhat suspect. By granting the variance it would not substantially negatively affected the General Plan nor is it contrary to the public interest and that the spirit of the zoning ordinance is observed and substantial justice would be done by granting the variance. Seconded by Connie Howard.

Call vote recorded by Ray Christensen.

<u>A</u>	Mr. Coombs
<u>A</u>	Ms. Haidenthaller
<u>A</u>	Ms. Howard

Motion passed 3-0.

CASE #1357 - SPENCER RICHES - 388 East 6240 South

Spencer Riches was present to represent this request. Ray Christensen reviewed the location and request for a front yard setback variance to add a porch onto the home. The property is zoned R-1-8 (residential single family). Section 17.100.080(A) of the zoning code states the following: "Front Yard. The minimum depth of the front yard shall be 25 feet." The applicant is requesting a 5' front yard setback variance to add a new porch onto the front of the existing home which will leave a 20' setback. The applicant states in his application that this will add dimension and curb appeal to the property.

Spencer Riches, 388 East 6240 South, stated they are desirous to give a new face onto the new home and create a better curb appeal and raise the value of the property. He stated they desired to have a roof conversion this summer which is what spurred this variance request. He submitted information to the Board members showing other homes in the neighborhood wherein a precedence has already been established with regard to front yard setbacks. He stated this request is not really an addition but is simply a porch and roof conversion and he has an architect working with him on this project.

Ms. Haidenthaller stated that the roof over hang may encroach into the front yard setback up to 4 feet. Mr. Christensen stated that roof over hangs and/or cantilevers may encroach up to 4 feet, but any columns or walls must meet the setback requirements and the posts for this proposal encroach 5 feet into the 25 foot setback.

Ms. Haidenthaller stated that each variance is viewed on its own merit and even if there is a precedent set in this area, it may not necessarily warrant granting a variance and often times

precedents are done without permits or any types of approvals. Three of the four other situations indicated by Mr. Spencer are corner lots with narrower lots.

Russ Vrba, 364 East 6240 South, stated that he lives three homes from Mr. Spencer. Mr. Vrba stated that this home was built in the 1950's and are older and not very attractive homes and any improvement would be welcome and would increase the value to the home and neighborhood. He stated he is in favor of the variance request.

Connie Howard asked Mr. Spencer if he is aware how the other homes were able to encroach into the 25 foot setback, whether permits were obtained or not. She stated that there are options available to keep the pillars without having an extension.

Mrs. Spencer stated that the porch posts would need to be 3.5 feet from the home in order to meet the required setback. Mr. Spencer explained the home currently has a 28 foot setback and the posts could be set three feet from the home and still meet the front setback. The porch is an 8 foot deep porch and they are desirous to have the posts further forward. The proposed new roof line is what would really gives the home an appealing look. He stated they have explored other options in an attempt to stay within the 25 foot setback, but have not been able to create a look that is appealing and cost effective.

Ms. Haidenthaller stated these types of variance requests are difficult because they do improve the property but the Board is bound to uphold the zoning ordinances.

Connie Howard expressed concern that there is no apparent hardship associated with this variance request. Mr. Coombs concurred.

Connie Howard made a motion to deny the variance as requested for failure to demonstrate a hardship and is a self-imposed hardship. Seconded by Wendell Coombs.

Call vote recorded by Ray Christensen.

<u>A</u>	Mr. Coombs
<u>N</u>	Ms. Haidenthaller
<u>A</u>	Ms. Howard

Motion passed 2-1.

CASE #1358 - WINCHESTER CONDOMINIUMS - 518 East Winchester Street

Brad Reynolds was present to represent this request. Ray Christensen reviewed the location and request for a side yard setback variance along the east boundary line for the Winchester Condos, a 10 unit condominium development. The property is zoned R-M-15 (residential multi-family). Section 17.120.060(B) of the zoning code states the following: "Side Yard. The minimum side yard for any dwelling shall be eight feet, and the total width of the two required side yards shall not be less than 20 feet." Mr. Reynolds is requesting a side yard setback of 1 foot which is a 4.5 foot variance; whereas the minimum setback is 8 feet. This represents a 95% variance request. The James Point Apartments is located to the east of the property and I-215 is located to the south of the property. There is no driveway that comes down to the southerly units. The southerly building is the location of the variance.

Wendell Coombs asked about the front of the condos. Mr. Christensen explained that the front of the condos is to the north facing Winchester Street and the back faces I-215. The front door

on the northerly five units would be to the west, and the front door to the southerly five units would be to the east.

Brad Reynolds, 2500 East Haven Lane, stated he is representing Cal Reynolds, owner of the property. Mr. Reynolds explained the east property line is where the variance is requested. He stated that this lot is long and narrow. Building #2 (southerly building) is situated different than Building #1 (northerly building) in order to provide access to the front door. The easement along the south end is a perpetual easement owned by Cal Reynolds that was granted to him from the James Point Apartments and would not have any adverse affect on anyone. He stated that he was unsure of the exact measurement for the easement but is approximately 5 feet. Mr. Reynolds explained that the easement is a perpetual easement that is owned by Mr. Reynolds, which means he controls the easement. He stated that the easement is a result of a property line dispute which took some time to work out and as a result of that dispute the perpetual easement was agreed upon and therefore the mortgage companies would not have to sign off on the boundary line dispute.

Rosi Haidenthaller asked how close is the next development from this proposed project. Mr. Reynolds responded that if there was a concern, the James Point Apartment management would not have relinquished the easement. Unfortunately, every angle on this property is difficult because it is so long and narrow.

Ms. Haidenthaller asked the width of the property from west to east. Mr. Reynolds responded the width is 85-100 feet wide. He stated the west side yard setback is 12 feet and the east side is 4½ feet on the south boundary which to measured from the easement. Mr. Christensen commented that the setback is measured from the property boundary and not the easement boundary and the property's boundary is on the west side of the easement. Mr. Christensen stated that the easement is owned by James Point Apartments, but that James Point Apartments management has given the easement to Cal Reynolds so as to be able to access and use the easement.

Ms. Haidenthaller stated if the easement is part of the setback, the setback variance is not very great; however if the easement is not the property line and therefore the variance is necessary to build the development where it is proposed. Mr. Reynolds responded that the hardship associated with this property is that the property is so narrow that the unit(s) will not fit on the property without some type of a variance and has no affect on any other property owners. With them controlling the easement, it just seems to make sense that it could be utilized as part of the setback.

There was a lengthy discussion regarding the setbacks and possible scenarios for locating the project on the property.

No comments were made by the public.

Wendell Coombs stated that the variance request is for a portion of the east boundary line and is not the entire length of the property line.

Ms. Haidenthaller suggested possibly reducing the size of the one unit where the variance is being requested, which would affect the floor plan of the unit, but may solve the setback situation. Mr. Reynolds responded that they have spent many hours reconfiguring possible scenarios for the development and originally the units were flip flopped, but the city staff recommended this proposal so as to line up with the utilities into the street right-of-way area. He stated the units are already small as currently proposed and additional reduction in unit size

due to the setbacks will make it impossible to get into the front door. He stated the size of units are 1,300-1,600 sq.ft. total for both the main floor and upper floor.

Mr. Coombs stated this project is bounded by apartments and a parking lot to the east and an office building and parking lot to the west. He stated that the portion of the property at the south end running east-west is a green space for a gazebo/playground area for the units. He commented that he would have more concern if this property was adjacent to residential zoning uses.

Mr. Reynolds stated that prior to this development there was an older rental four unit apartment that has since been demolished and this proposal will improve the area. He stated a portion of the property at the south was recently acquired from UDOT in an attempt to make the property developable.

Rosi Haidenthaller asked for clarification of the variance request per the application information and the cantilever/deck. Mr. Reynolds responded that he understands the variance request to include the 4.5 feet setback from the easement. He stated the closest portion of the structure to the easement is 4.5 feet which is the actual corner of the building and not from the deck.

Ms. Haidenthaller suggested continuing this request because of the discrepancies and confusion in the site plans and measurements. Mr. Reynolds stated that he believes the variance request is 4.5 feet from the building to the easement, and if it were to the deck, the deck could simply be removed which would solve the problem. He stated the corner of the last unit of the south building is where the variance is necessary and not the entire building.

Ms. Haidenthaller expressed concern with fire safety and access with this small of a setback variance as requested, even though there is an easement adjacent to the property it is still only an easement. Mr. Reynolds responded that the fire marshal has required that a couple of the southerly units be fire sprinklered because of the fire safety issue and distance of the parkway.

Mr. Coombs stated that the fence is not on the property line and asked for clarification on the distance between the fence and the actual property line. Mr. Christensen responded the easement is about 10 feet plus the 4.5 feet setback, totaling 14.5 feet.

Ms. Howard stated asked if this development meets all the other city department requirements, such as access, fire sprinklered, building codes, etc. Mr. Reynolds responded in the affirmative, but the plans have not been totally signed off by all the departments as of yet, but all the departments have preliminarily looked at the plans and made recommendations.

Connie Howard stated that a 4.5 foot setback is very small and it is a misconception with the setback from the easement and the actual property line. She stated that she felt there are options available for reconfiguring the units on the property.

Connie Howard made a motion to deny the variance request simply because there are additional options available even with the size and narrowness of the lot such as remove one unit and they would then be able to meet the setback requirements. Seconded by Wendell Coombs. Mr. Coombs commented that the variance request is self-imposed and is a large variance request and felt there are other options available to the property owner.

Call vote recorded by Ray Christensen.

A Mr. Coombs
 A Ms. Haidenthaller
 A Ms. Howard

Motion passed 3-0.

APPEAL CASE #1359 - JOHN MORRELL - 178 East Mountain View Drive

John Morrell was present to represent this request. Ray Christensen presented the request appealing a decision of the Community Development director regarding a duplex in an R-1-8 (residential single family) zoning district. The Community Development Director, Dennis Hamblin, concluded that the duplex addressed 178 East Mountain View Drive is an illegal duplex and has been since the alleged use began on or about the year of 1956. This decision was made based on the information submitted by Mr. Morrell and information obtained from the Community Development office. According to the zoning ordinance and map published by the Murray City Recorder, this area was zoned as an "A" district since 1951 which allowed for "one-family dwellings" but not two-family dwellings. The following zoning ordinance and map dated 1957 also indicated an R-1 zoning that allowed only one-family dwellings and has been similar since that time. Mr. Christensen stated that a building permit was issued for this property in 1956, but the specific information for the type of building permit are not available. There were subsequent building permits for two-units after that time showing it as a two dwelling unit, but no record of a two-dwelling unit ever having been officially approved. The use of a two dwelling unit does not make it legal if it has never been approved for a two dwelling unit.

Wendell Coombs stated that based on the zoning ordinance and maps submitted to the Board it appears to him that the two dwelling units have always been an illegal use and were illegal at the time the second addition was added. He questioned why the property has gone for such a long time as an illegal use.

John Morrell, 2494 West 3965 South, West Valley City, stated that he reviewed the archives and found a building permit issued in March of 1956. Also, in October of 1956 through an assessors card, it showed the final approval for the addition to have a bedroom, a bath, a kitchen and separate utilities and from that day on the original owner and every owner since that time has used the structure as a rental unit. He stated that he has met with each of the previous owners that he could find and they all indicated to him that it has been used as a rental unit. He stated that the final inspection per the assessors card indicated that the Murray city inspectors must have known that this was a two-unit structure and has had two separate gas meters, two separate power meters and two separate addresses for the entire time.

Connie Howard stated that because of the zoning ordinance and district that existed in this area, the structure could not have been legally approved as a duplex.

Rosi Haidenthaller asked the purpose of having this property legally recognized as a duplex at this time and generally these types of issues are not typically enforced by cities. Mr. Morrell responded that for the enjoyment of the property he desired to have the property officially recognized as a two-unit structure and also from a financial standpoint for now and any future owners. He stated he has spent extensive amounts of money for the recent remodeling and has completely refurbished the structure.

Connie Howard clarified Mr. Morrell's opinion that because of the building permit issued in 1956, the separate gas meters and the new kitchen that the Murray City officials should have intuitively known that this was a two-family dwelling. Mr. Morrell concurred. Mr. Morrell stated

that since 1997 the county has shown on their documents that this structure is a two-family dwelling and that information has been submitted in the application.

Ray Christensen stated that the building inspection department nor the county assessors office do not have much to do with the type of use of the structures, but are more concerned with the building codes and safety issues, and this is a zoning issue. Mr. Morrell stated the county assessor's card in October of 1956 it showed two kitchens, two baths, etc.

Mr. Coombs clarified that the Board's duty is to determine if the Community Development Director made a correct decision based on the law and on the information available which was that this structure is an illegal duplex. He stated that the Board cannot change the zoning to make this property a legal duplex.

Connie Howard stated that the Community Development Director provided legal information that verifies that this structure was never legally approved as a two-family dwelling and the information submitted by Mr. Morrell does not prove otherwise.

Rosi Haidenthaller quoted from the Board of Adjustment handbook, page 12 under nonconforming uses: "The legality of a nonconforming use is determined by its legality at the time it came into being. Was it legal at the time? Was it legally established? If not, it has no legal right to continue in its present location. Time does not buy legality." Just because this duplex has existed for over 50 years as a duplex, does not change the legality of the nonconforming use.

G.L. Critchfield, Deputy City Attorney, stated that the Board could believe both Mr. Morrell and Mr. Hamblin's information and still find one way or the other. Mr. Morrell has presented facts that the property has been used in a certain way for a very long time and Mr. Hamblin's letter does not dispute that information nor does he refute that information. There are no facts presented by the city to indicate that it was used differently, or it was abandoned, and Mr. Hamblin has presented the law stating that from a legal technical perspective it was never established in the law as a legal duplex. He stated the question tonight is legally speaking, "could this ever have been zoned legally as a duplex, given the information submitted?"

No comments were made from the public.

Wendell Coombs stated that based on the information given to the Board, that the legal issue is that this property was nonconforming to the zoning laws at the time it was put into place and that legally it was an "A" zone which was subsequently changed to an "R-1" zone, both of which only provided for single family residential uses and was therefore not legal. Mr. Coombs made a motion that the Board conclude with Mr. Hamblin's decision that this duplex was not a legal use of the property at the time it was put into place. Seconded by Connie Howard.

Call vote recorded by Ray Christensen.

 A Mr. Coombs
 A Ms. Haidenthaller
 A Ms. Howard

Motion passed 3-0.

Mr. Coombs stated that Mr. Morrell's recourse is to resolve with city staff and the city attorney's office this issue. He stated that each time a new tenant moved onto the property, the utilities

must have been changed into the new tenants name and the city may have had plenty of time to bring this issue forward and possibly in essence the city granted the use by not making it an issue. He stated that the Board cannot solve that issue and must be resolved with the city staff and city attorney's office.

OTHER

Rosi Haidenthaller stated that at last months meeting the Board discussed reviewing the Board of Adjustments written procedures. The Board would like to have in the minutes that the Board would like to review the procedures and application and decide if they should be updated or amended and the Board requests that the staff work on obtaining copies of other cities of similar size and infill issues, applications and information. She stated that the Board and city staff could then review this information for any necessary updates. She stated that the Board would also like additional training.

Ms. Haidenthaller requested that the zoning information be included in the packets from the municipal code and quote appropriate sections for each applicable application.

Ms. Haidenthaller recognized, Tim Tingey, the new Community & Economic Development Director and welcomed him to the city. Mr. Tingey expressed his thanks to the Board. He indicated that staff is modifying the way the staff reports are prepared and how the packets will be put together in the future. He stated that the Board will be offered additional training and possibly having study sessions.

Meeting adjourned.

Ray Christensen
Senior Planner